

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted November 26, 2011 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 27, 2011 appellant, then a 53-year-old express mail clerk, filed a traumatic injury claim (Form CA-1) alleging that, on November 26, 2011, she was carrying heavy bags and pulling them into a postal container when she felt pain in her left leg and hip in the performance of duty.

By decision dated March 14, 2012, OWCP denied appellant's claim. It found that the medical evidence submitted was insufficient to establish a firm medical diagnosis in connection with the accepted November 26, 2011 employment incident. OWCP noted that appellant's physician diagnosed low back pain, left thigh pain, and left hip pain, and explained that pain was considered a symptom, not a diagnosis.

On April 4, 2012 appellant requested a review of the written record by an OWCP hearing representative and submitted additional medical evidence. By decision dated July 11, 2012, an OWCP hearing representative affirmed the March 14, 2012 decision.

Appellant, through counsel, subsequently submitted multiple requests for reconsideration. However, by decisions dated June 14, 2013, and February 19, July 8, and December 12, 2014, OWCP denied modification of its prior decisions.

On March 3, 2015 appellant, through counsel, appealed to the Board. By decision dated January 15, 2016,<sup>4</sup> the Board found that appellant had not met her burden of proof to establish an injury causally related to the accepted November 26, 2011 employment incident.

On January 3, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a December 27, 2016 report, Dr. Carlos Montero, a Board-certified orthopedic surgeon, noted that appellant had related a history of injuring her left hip and left lower extremity while working at the employing establishment. He explained that appellant's injury occurred while appellant was carrying and lifting heavy bags and placing the heavy bags into a postal container. Dr. Montero noted that appellant initially saw Dr. Brown, and she had been diagnosed with a strain of the left hip with traumatic bursitis and iliotibial band syndrome with aggravation of degenerative

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<sup>3</sup> Docket No. 15-0830 (issued January 15, 2016), *petition for recon. denied*, Docket No. 15-0830 (issued August 19, 2016).

<sup>4</sup> *Id.*

joint disease. He related that appellant had a previous work-related injury on August 10, 2009 when a heavy box struck her right foot causing a contusion of the right foot, a lumbar sprain; and a right foot crushing injury. Dr. Montero opined that the prior injury involved her right lower extremity and lumbar spine and explained that appellant was examined by him for the first time on November 10, 2016 with the chief complaint of severe pain in the left trochanteric region related to the left thigh and knee. He examined appellant and provided findings, which included a history of left hip pain localized in the left thigh. Dr. Montero also indicated that the examination disclosed painful range of motion in the left hip which was full, but painful at extremes. He noted that appellant walked with a cane due to the pain in the left thigh and there were no contractions. Dr. Montero advised that an examination of the hip disclosed no evidence of contractions. He also related that appellant had an intact neurovascular examination and found that her x-rays were unremarkable. Dr. Montero reviewed a right MRI scan of the left hip with a finding of greater trochanteric bursitis, left gluteus medius tendinitis with intrasubstance longitudinal partial tear, and left gluteus medius tendinitis. He diagnosed chronic left greater trochanteric bursitis unresponsive to treatment with gluteus medius tendinosis. Dr. Montero opined that appellant's condition was related to her work-related injury sustained on November 26, 2011. He advised that her condition was permanent, that she might require surgery, and that she was totally disabled from work.

A November 29, 2016 MRI scan of the left hip read by Dr. Jonathan S. Luchs, a Board-certified diagnostic radiologist, revealed left greater trochanteric bursitis; left gluteus medius tendinitis with intrasubstance longitudinal partial tear, without full-thickness tear; and insertional left gluteus medius tendinosis without full-thickness tear.

By decision dated March 24, 2017, OWCP denied modification of its January 15, 2016 decision. It explained that the evidence submitted was insufficient to modify the January 15, 2016 decision because it did not provide a sufficiently rationalized medical opinion as to how lifting a bag into a postal container was the competent cause of the diagnosed hip and back conditions.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There

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<sup>5</sup> See *supra* note 2.

<sup>6</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.

Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>7</sup> Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>10</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 26, 2011 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's December 12, 2014 decision because the Board considered that evidence in its January 15, 2016 decision and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup>

Appellant subsequently submitted a December 27, 2016 report from Dr. Montero. In his report, Dr. Montero noted that appellant related that her history included injuring her left hip and left lower extremities while working at the employing establishment. He diagnosed chronic left greater trochanteric bursitis unresponsive to treatment with gluteus medius tendinosis. Dr. Montero opined that appellant's condition was related to her work injury sustained on

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<sup>7</sup> A.D., Docket No. 17-1855 (issued February 26, 2018); Gary J. Watling, 52 ECAB 357 (2001).

<sup>8</sup> Robert G. Morris, 48 ECAB 238 (1996).

<sup>9</sup> Victor J. Woodhams, 41 ECAB 345, 352 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>12</sup> See B.R., Docket No. 17-0294 (issued May 11, 2018).

November 26, 2011. Furthermore, appellant's condition was permanent and might require surgery. However, Dr. Montero did not explain how the incident on November 26, 2011, which included carrying heavy bags and pushing them at work caused her diagnosed conditions or contributed to or aggravated her preexisting degenerative conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to an employment incident.<sup>13</sup> The Board therefore finds that the medical opinion of Dr. Montero is insufficient to establish appellant's claim.

Also submitted was a November 29, 2016 MRI scan of the left hip. The Board has held, however, that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>14</sup>

The Board finds that there is no medical evidence of record which contains a reasoned explanation of how the November 26, 2011 employment incident caused or aggravated appellant's diagnosed conditions.<sup>15</sup> Thus, appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 26, 2011 employment incident.

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<sup>13</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>14</sup> See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>15</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board